GOVERNMENT OF KARNATAKA

Social Welfare and Labour Department

Labour dispute.—Industrial dispute between the workmen and the Management of Karnataka State Road Transport Corporation, Belgaum Division, Belgaum.

Award of the Presiding Officer, Labour Court, Hubli published.

Read the following papers:

(1) Letter No. LCH-2507/74-75, dated 1st/3rd March 1975, from Sri H. L. Narayana Gowda, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT AT HUBLI

Reference ID (LCH) Claim No. 57/1973

Present:

Sri H. L. Narayanagowda, B.A., LL.B.,
Presiding Officer.

Date: 1st March 1975

Claimant:

Sri Y. R. Nesoor, Ex Conductor, 633 Rajuns Gathi, Angol, Belgaum.

Vs.

Respondent:

The Management of Mysore State Road Transport Corporation, Belgaum Division, Belgaum.

Order No. SWL 629 LLD 73, dated 3rd August 1973.

JUDGEMENT AND AWARD

The Government of Karnataka have made this reference under clause (*c*) of sub-section (1) of Section 10 of the I.D. Act 1947 (Central Act 14 of 1947) referring the dispute between Sri Y. R. Nesoor, Ex-Conductor, K.S.R.T.C. Belgaum and the Management of K.S.R.T.C. Belgaum Division, Belgaum for adjudication on the following points of dispute :

"(1) Whether the Management of Mysore State Road Transport Corporation, Belgaum Division, are justified in dismissing Shri Y. R. Nesoor, Conductor with effect from 7th November 1970 ?

If not, to what relief the said workman is entitled ?"

2. The claimant in his claim statement states as follows. The claimant was working as a conductor in the Belgaum Division of K.S.R.T.C. by his Order No. DCB/EST/340/17255, dated 6th November 1970 (C.E.O. No. 715 of 1970) by the Deputy General Manager and Divisional Controller, K.S.R.T.C. Belgaum, has unlawfully dismissed the claimant from K.S.R.T.C. Service. The appeal dated 13th November 1970 preferred by the claimant to the General Manager against the said order of dismissal came to be rejected, *vide* G.M's. Order No. MST/EST. D1 (BCM-1072-71)/1161, dated 14th March 1972. The second appeal preferred by the workman to the Vice-Chairman has been decided and the decision thereof has been communicated to the claimant. The second appellant authority having held the charge of attempted pilferage disproved ought to have allowed the appeal and ordered the claimant's reinstatement. But instead the second appellate authority gave the workmen the so called 'concession' of appointing the claimant as a fresh candidate as Helper 'B'. This decision of the 2nd appellate authority is not acceptable to the workman. Appellate authority is not acceptable to the claimant the same being unfair, unjust and illegal. The charges levelled against

the workman are false and baseless. Those charges have never been duly proved. Hence the order is unjust, inequitable and illegal. The departmental enquiry made against the workman is not proper and legal. It is not in consonance with the Rules framed for the purpose. Principles of natural justice have been gravely violated during the course of enquiry held against the workman. No sufficient and reasonable opportunity has been given to the workman to defend himself and to plead and prove his innocence. The Dy.G.M. and D.C. has not properly applied his mind to the facts of the case. He has also failed to duly consider the replies given by the workman to the chargesheet and to the show-cause notice. The appellate authorities failed to follow the prescribed procedure in deciding the appeals and failed to see further that the charges against the workman were not duly proved and that the proper procedure was not followed during the enquiry held against the claimant. The Conduct of the enquiry and of the appeal has been so faulty that the same have become farcical. He prays that he may be reinstated inservice with full back wages and conticnuity of service.

3. The Respondent in its written statement pleads as follows :

The claimant was appointed on daily wages as conductor on 10th November 1966 and was confirmed to the post on 1st December 1967. The claimant was on duty on 10th October 1969 on Belgaum Gajendragad route on the vehicle bearing Registration No. MYF 3267. The checking squad of the Respondent Corporation checked the vehicle at Kardiguddi near Marihal Village and noticed that seven passengers were travelling in the said bus without tickets. The claimant had collected fares from the passengers but had not issued the tickets to them. On the checking squad noticing the said irregularities of the claimant asked the claimant to issue seven tickets of 50 paise denomination being the amount of fare. The

passengers were issued tickets bearing serial No. 42080 to 42086. The checking squad also directed the claimant to submit the T.R. 10 Form and Way bill on the following day, *i.e.*, on 12th October 1969. The claimant gave a false report to the Depot Manager (A) Belgaum submitting that way bill No. 383150 and TR-10 form 294050 were collected by the checking staff Hubli Division at Gajendragad. Therefore, expressed his inability to submit the said TR-10 form and way bill. On the checking squad checking the bus manned by conductor claimant, a note was made in the TR-10 form and way bill about the non-issue of the tickets to the seven passengers. The TR-10 form and way bill imporant documents to prove the pilferage against the claimant. The claimant therefore intentionally suppressed the TR-10 Form and Way bill anticipating an action for pilferage and to destroy the evidence against him. This a mala-fide wanton act of the claimant to save his skin against the penal action for committing pilferage. A reference was also made to Hubli depot to know as to whether any member of the checking squad of the Hubli Division checked the bus bearing resigtration No. MYF 3267 manned by the conductor claimant, checked the vehicle and took custody of Way bill and TR-10 form. After due enquiry a reply was received from the Hubli division intimating that the bus manned by the claimant conductor was not checked by any member of the checking squad of Hubli division of Respondent Corporation. The Security Inspector of Belgaum division also submitted a report that the TR-10 form and way bill issued to the claimant by the Writer Shri K. B. Halgi of Belgaum division for Belgaum Gajendragad route. The TR-10 form and Way bill were noticed by checking squad of Belgaum division when the bus was checked near Kurdiguddi. Therefore the claimant intentionally with *mala-fide* intention and to prepare his defence in the departmental action for pilferage by the Respondent Corporation intentionally distroyed the evidence against him by suppressing the TR-10 form and Way bill. There is an intentional misrepresentation to save his kith and kin.

Parting with TR-10 form and Way bill was an act of grave negligence of the claimant in the discharge of his duties. A departmental enquiry was held against the claimant. A chargesheet was framed by the competant authority Originally Shri V. S. Motgi, the Divisional Traffic Officer and subsequently Sri T. V. Nathan was appointed as enquiry Officer to hold inquiry against the claimant. The claimant in response to the show-cause notice submitted his reply. The claimant was heard personally by the Inquiry Officer and due and adaquate opporutnity was afforded to the claimant at the time of enquiry to represent his defence. The personal hearing of the case was commenced on 2nd September 1970 All the provisions of law were strictly adhered, to. Every opportunity was giveen to the claimant to defend himself. Principles of natural justice was followed in its entirety. The Enquiry Officer after due enquiry submitted a report holding the claimant to be guilty of pilferage and also held that the claimant has intentionally suppressed of the way bill and TR-10 Form to destroy evidence against him. The Deputy General Manager and Divisional Controller being satisfied on the report of the inquiry Officer that the guilt of claimant has been brought home and proved issued a showcause notice to show-cause why the claimant should not be dismissed from service. The claimant gave his reply to the Respondent Corporation. The Divisional Controller, Belgaum after taking into consideration the report of the enquiry Officer the contents of the show-cause notice and reply submitted by the claimant and after hearing the claimant personally was inclined to hold that the grave offence of pilferage and intentionally suppressed of TR-10 Form and way bill have been proved against the claimant and therefore ordered the dismissal of the claimant from service. The claimant preferred an appeal to the General Manager of the Respondent Corporation against the order of the Deputy General Manager and the D.C. The General Manager by order dated 14th March 1972 was pleased to dismiss the appeal. The claimant preferred a second appeal to the Vice-Chairman of the Respondent Corpo-

ration. As the way bill and TR-10 Form have been intentionally suppressed by the Claimant, therefore the Vice Chairman was pleased to agree with the findings of the General Manager as regard the intentional suppressing of TR-10 form and way bill and destroying the evidence available against him. Taking humanitarian view of the case in these days of rising price, th Vice-Chairman took pitty on the claimant and appointed him as Helper 'B'.

This court cannot go into the question whether the dismissal is proper. It can not sit in judgement over the quantum of punishment awarded by the employer. It is not true that the Divisional Controller has unlawfully dismissed the claimant. It is not true that the proper procedure was not followed during the course of enquiry held against the claimant. The Respondent has lost confidence of the claimant in his honesty and sincerity. The Respondent believes that the funds of the Respondent Corporation are not safe and secure in the hands of the claimant. It prays that the refrence may be rejected with costs.

4. In support of its case the Respondent Corporation has examined four witnesses. Ex. M-1 to M-15 are the documents filed for it. The claimant has examined himself nor any witnesses. Ex. W-1 is the document filed for him.

5. I have perused the records and heard Sri Ram-Apte, learned advocate for the claimant. Sri A. K. Soudagar learned advocate for the Respondent is not heard.

6. MW-1 is one Sri Krishnaji Ramchandra. He is Inspector KSRTC. He has given evidence that since 11 years he is working as St. Traffic Inspector, Belgaum. In 1969 he was serving in Belgaum Division in the line checking Squad. On 11th October 1969 he had checked the vehicle No. MYF 3267 at Malihal on Belgaum Gajendragad Road. He found that the conductor claimant had not issued

tickets for 7 passengers. According'y he submitted the report Ex. M-1. Mr. D. D. Patil Traffic Inspector was also with him. He has also signed Ex. M-1. On the following day he called upon the claimant to file a statement Ex. M-2 are the tickets issued in his presence to the passengers who were travelling without tickets Ex. M-2 were issued at his instance. Then he called upon the claimant to produce the way bill. On the following day the claimant reported that the way bill had been taken away by the checking staff of Hubli Division. Thereafter he submitted the papers to the Office for further action.

7. In Cross examination he states that according to the passengers they had paid the bus fare to the claimant. The statements of the passengers were recorded. They signed the statement. It is true that if fare amount is collected and tickets are not issued it is pilferage. It is not true that the enquiry Officer found that the claimant had not collected fare amount from the passengers. It is not true that the passengers told him that they had not paid fare amount to the claimant.

8. In Re-examination he states that after the issue of tickets the passengers did not pay the amount to the conductor.

9. MW-2 is one Sri T. Vishwanathan, Divisional Traffic Officer, Mysore Division, KSRTC. He has stated that 1970-71 he was Divisional Traffic Officer at Belgaum. He was appointed as an enquiry Officer in this case. The chargesheet was issued to the claimant. It was issued by Sri Motagi, Divisional Traffic Officer and it is Ex. M-3. Ex. M-4 is the explanation given by the claimant Ex. M-5 are the proceedings of the enquiry. Ex. M-6 are his findings. In the enquiry he was allowed to cross examine the witnesses. He did not produce any witness on his behalf.

10. In cross examination he states that he cannot read Kannada. He started with the preliminary enquiry against the claimant. Then he recorded the statement of reporting Officer. Thereafter he did not record the statement of any body on behalf of the Respondent. It is true that in reply to the chargesheet the claimant had stated that he had not collected the fare amount from the passengers. The checking Officer stated that he had collected. No passengers was examined on behalf of the Corporation. He came to the conclusion that the conductor had not collected the fare amount from the passengers.

11. MW-3 is Doddagowda Patli, Divisional Security Inspector. He has stated that it is true that in 1970 he was working as Divisional Security Inspector at Belgaum. It is true that he was asked by the Divisional Controller to require as to whether the way bill of the claimant of Gajendragad, Belgaum Road on 11th October 1969 was taken away by the checking staff of Hubli Division. He made enquiries. He submitted the confidential report. Ex. M-7. During the enquiry he came to know that the conductor has destroyed the way bill and it was not taken away by any body.

12. In cross examination he states that he do not exactly remember whether he was examined as a witness in the domestic enquiry against the claimant. He did not issue any notice to the claimant about the investigation conducted by him. He has not seen the claimant destroying the way bill. So also nobody told him about the claimant destroying the way bill. The enquiry was conducted confidentially. It is not true that his inference that the conductor claimant destroyed the way bill is not true.

13. MW-4 is Divisional Controller Sri Kamat. He has stated that in June 1969 he was Divisional Controller Belgaum. The claimant was serving as conductor during his regime. It is true that the line checking squad had

checked the bus in which the claimant was the conductor and found ticket irregularities. Ex. M-1 is the report submitted by MW-1. Thereafter he appointed an enquiry Officer. The enquiry Officer submitted his report Ex. M-6 After receipt of the report of the enquiry Officer, he issued a show-cause notice dated 28th September 1970 to the claimant. Ex. M-9 is the office copy of the notice. He issued another notice dated 17th October 1970 fixing the date for personal hearing of the claimant. Ex. M-10 is the office copy of that notice. Ex. M-11 is the reply of the claimant to Ex. M-9. He held further proceedings in pursuance of the show-cause notice. The original of Ex. M-9, Ex. M-12 are the proceedings conducted by him dated 26th October 1970. He afforded him every opportunity to defend himself in the enquiry before him. After going through the report of the enquiry Officer, his impression was that he should not accept the findings of the enquiry Officer on the question of pilferage. Then he again went through the records of the case and also circumstancial evidence. His conclusion was that this conductor has suppressed material evidence *viz* Conductor's way bill and Traffic Form just to escape his liability. He has recorded his findings disagreeing with the findings of the enquiry Officer. His finding are at Ex. M-13. The charges against the claimant were two fold one is pilferage and the other is suppression of material documents. On the representation made by the claimant that the way bill and Traffic Form had been taken away by flying squad of Hubli Division, he contacted the flying squad and also his counter part Hubli. Ex. M-14 is the report dated 28th October 1969 from Security Officer, Hubli intimating that the bus in which the claimant was the conductor had not been checked by them. Ex. M-15 is the letter dated 12th November 1969 written by the Divisional controller, Hubli, in this connection. Whenever a conductor commits default, that fact will be noted in the history sheet of that conductor and also indicating the punishments given to him in each case. Now he has absolutely no confidence in the claimant. It is true that when the conductor is on the bus, the office issues him a way

bill and also tickets. The tickets issued are noted in the way Bill. Way bill is a document wherein the number of passengers who boarded the bus at every stage and number of passengers who elighted at every stage are mentioned and also the tickets issued to the passengers at the end of each stage the way bill is to be closed. The Way bill is the most important document to find out the pilferage. He says that the claimant suppressed the way bill because he had committed default. The Vice-Chairman of the Corporation in 2nd appeal has offered the claimant alternative job of helper 'B'. That post does not involve handling of cash.

14. In cross-examination he states that the first charge against ths claimant is that he failed to issue tickets to 7 passengers and attempted pilferage of Rs. 3.50. The 2nd charge is that he failed to surrender the way bill on completion of his duties with deliberate intention of destroying evidence. He found him guilty on both the charges. It is true that the enquiry Officer found that the claimant was guilty of supression of documents and found that the claimant was guilty of supression of documents and found that the claimant was not guilty of pilferage. It is true on the very next day of the checking of the bus the claimant represented in writing that the way bill had been taken away by the some other checking staff. Ex. W. 1 is the representation given by the claimant. Since 8 years he has been working as Divisiosal Controller. There are 12 divisions of K.S.R.T.C. in the stage. It is true that each division has its own checking squad. In addition there are a regional squad for every region controlled by the Security Officer. It is true that the checking squad of any division, or regional squad of any other region can check any bus any where in the State. It is true that he made enquiries with the Security Squad of Hubli division, and regional Security Squad of Northern area. It is true that he did not make enquiries with the flying squads of other divisions or regions. It is true the claimant has not specifically stated any where that

flying squad of Hubli division, has taken away the way bill and the Traffic form. During the enquiry nobody has stated about his seeing the claimant destroying or tampering with way bill and Traffic Form. He has conducted about 500 enquiries. In his opinion in some cases a person can be found guilty on circumstancial evidence in addition to direct evidence. It is true that there is no direct evidence in this case. It ih not true that because of his prejudice against conductors in general he has found the claimant guilty. The enquiry Officer did not examine any passenger during the enquiry. He also did not examine any passenger. There was no impadement in examining those passengers. But have got their own difficulties. The passengers do not turn up for giving evidence. In this case no attempt was made to secure passengers as witnesses and examine them. It is true that the claimant has denied the allegation of having collected fare amount from the passengers both in reply to the charge sheet and show-cause notice. He again say that passengers were tendering money. According to him the contents of para 3 of Ex. M. 11 now marked as Ex. M. 11(a) amounts to admission on the part of the claimant for having received the fare amount. He acted upon the inspector's report in tddition to the admission made by the claimant. This is all material he replied on. The Inspector's statement in his opinion was proved before the enquiry Officer. He knows that the statement can be proedv only by putting it to the persons who made it and by his stating that the contents were correct. The Inspector has not stated in specific terms that particular document wah his report and its contents were correct. It is true that he took into consideration the past unsatisfactory records of the claimant in awarding punishment. The fact that his past default could be taken into consideration in awarding punishment was not communicated to the claimant. It is not true that he took the decision of dismissing the claimant because of his prejudice against him and his decision was not *bona fide*. He had no personal knowledge of any of the conductors working under him.

15. In Re-examination he states that the regional Security Officer, Hubli has got jurisdiction over 4 districts. It is not practicable for any other Security Officer expecting Hubli division to go and check the bus at Gajendragad. The jurisdiction of each Security Officer is specified.

16. The Respondent has conducted a thorough domestic enquiry against the claimant and after domestic enquiry it has dismissed the claimant. As the claimant was undefended in the enquiry, I proposed to consider whether the charges levelled against the claimant are proved are not.

17. There are 2 charges against the claimant. One is that he had not issued tickets for seven passengers though he had received the fare amount. The 2nd charge is that he destroyed the way bill and TR-10 form to suppress the evidence.

18. First I will take up the 1st charge, *viz.*, that the claimant had not issued tickets to seven passengers though he had collected fare from them. MW 2 Divisional Traffic Officer admits in cross-examination that it is true that in reply to the charge sheet the claimant had stated that he had not collected the fare from the passengers. The checking Officer stated that he had collected. No passengers was examined on behalf of the Corporation. He come to the conclusion that the conductor had not collecting fare amount from the passengers. 'So the enquiry Officer himself has found that the charge of pilferage is not proved against the claiment. In view of this, I must hold that the Respondent has not proved the charge of pilferage against the claimant.

19. The 2nd charge in my opinion, is amply proved. The claimant does not say that he submitted the way bill and TR-10 form to the Office after he returned from Gajendragad. His defence is that those documents were taken away by some flying squad of Hubli Division. Sri

Kamat MW 4 has contacted the Hubli division and has come to know that the Hubli flying squad did not attach and take away the way bill and TR 10 form from the claimant.

17. Sri Ram Apte submits that it may not be flying squad of Hubli division that has taken away the TR 10 form and the way bill. It is some other flying squad in the state. He submits that there are Regional squad and Central Squad and therefore some squad must have taken away the Way bill and TR-10 form. I do not permit Sri Ram Apte to take up this defence. The claimant specifically pleads that Way bill and TR-10 form were taken away by the checking squad of Hubli division. Now he cannot improve upon his stand and take a differest stand altogether stating that some squad either Central or Regional of K.S.R.T.C. must have taken away the Way bill and TR-10 form. I am satisfied that the claimant has destroyed the way bill and TR-10 form purposefully. That charge is amply proved.

18. Was bill and TR-10 form are important documents. If they are destroyed, then the funds of K.S.R.T.C. in the hands of conductors can safely be misappropriated. It is a grave charge and that charge is established. In my opinion the claimant has been rightly dismissed from service. The reference must be rejected.

AWARD

19. The reference is rejected. No costs.

P. L. NARAYANA GOWDA

Hubli,
1-8-1975

Presiding Officer.
Labour Court, Hubli.

ORDER

Bangalore, dated the 17th March, 1975.

S.O. 1055.—WHEREAS by State Government Order No. SWL 629 LLD 73, dated 3rd August 1973 the industrial dispute between the workmen and the management of Karnataka State Road Transport Corporation, Belgaum Division, Belgaum, was referred to the Labour Court, Hubli for adjudication.

AND WHEREAS the Labour Court, Hubli, has submitted to the State Government its award in respect of the said industrial dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above in the *Karnataka Gazette.*

[No. SWL 65 LLA 75].

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.